

IN THE
COURT OF CRIMINAL APPEALS
OF TEXAS

FILED
COURT OF CRIMINAL APPEALS
8/23/2017
DEANA WILLIAMSON, CLERK

THE STATE OF TEXAS,

Appellant,

v.

DANIEL VILLEGAS,

Appellee.

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No. PD-0053-17

APPELLEE'S MOTION FOR LEAVE TO EXCEED WORD LIMIT

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

COMES NOW DANIEL VILLEGAS, Appellee, and files this Motion for Leave to Exceed Word Limit, and would show the following:

1. This is a State's appeal from a pretrial order excluding evidence in a murder prosecution. Appellant's brief was filed on July 6, 2017. Appellee's brief is submitted contemporaneously with this motion.

2. The record on appeal consists of 22 volumes of clerk's record (over 7800 pages) and ten volumes of reporter's record (over 500 pages). Appellant's brief presents various arguments challenging the exclusion from evidence of 37 jailhouse recordings, which were excluded on the grounds of relevance, hearsay, and Rule 403 balancing.

3. In order to fully address the arguments presented in Appellant's brief, the record, and the applicable law, Appellee's brief must exceed the word limit of the Rules.

4. Although Appellant's brief did not exceed the word limit, Appellee believes that a longer brief is necessary to fully respond to the accusations and arguments of Appellant's brief, for the following reasons:

- A. Appellee's brief addresses his contention that appellate jurisdiction is lacking, an issue not addressed in Appellant's brief;
- B. Appellee's brief addresses Appellant's failure to preserve its arguments for review, in the trial court and the Court of Appeals, issues not fully addressed in Appellant's brief;
- C. A more detailed description of the facts is necessary to fully address the grounds for review presented, including discussion of the statements made in the recordings at issue and the context of those statements, rather than Appellant's mischaracterization of those statements;
- D. Appellant's brief is replete with references to Appellee's false confession to the crime in 1993, when he was sixteen years old.

A more detailed description of the facts is necessary to shed light on the circumstances in which that false confession was coerced;

- E. A more detailed description of the facts and procedural history is necessary for Appellee to rebut numerous broad and general assertions in Appellant's brief, such as its claim that the trial court's finding of numerous and inexcusable mistakes and omissions by the State is "unsubstantiated" (A'nt brf. p. xii); that a particular witness gave a statement including details that were "consistent" with the known details of the crime (A'nt brf. p. 2); that details of Appellee's testimony and the testimony of other witnesses were inconsistent or implausible (A'nt brf. pp. 4-5, 10, 13); and the accusation that the recordings at issue in this appeal "confirm" that "something untoward was going on behind the scenes." (A'nt brf. p. 5).

5. For these reasons, Appellee moves the Court to permit the filing of Appellee's brief in excess of the word limit, submitted on this date.

WHEREFORE, PREMISES CONSIDERED, Appellee requests leave to file Appellee's Brief in excess of the word limit of Rule 9.4, and such other and further relief to which he may be justly entitled.

Respectfully submitted,

/s/ Joe A. Spencer, Jr.

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ATTORNEYS FOR DANIEL VILLEGAS

CERTIFICATE OF SERVICE

The undersigned counsel certifies that this pleading was served on **Jaime Esparza**, El Paso District Attorney, Attn: **Lily Stroud** (lstroud@epcounty.com), and **Tom Darnold** (tdarnold@epcounty.com), Assistant District Attorneys, Attorneys for Appellant; and to the **State Prosecuting Attorney** (information@SPA.texas.gov); on August 17, 2017, by electronic service.

/s/ John P. Mobbs

John P. Mobbs